

REMARKS

Pursuant to the previously submitted paper entitled "PRELIMINARY AMENDMENT A," which was submitted concurrently with the filing of the present application on 03/22/2004, Claims 1-21 were cancelled and Claims 22-41 were added.

As per the current submission, Claims 42-50 are added to the present application. New Claims 42-50 find support at pages 13, 14, 25, in the FIGURES, and elsewhere in the application as filed.

Claims 22-50 are now in the application. Applicants submit that no new matter has been added. Reconsideration of the application is respectfully requested in light of the foregoing amendments and the following remarks.

Applicants respectfully point out that in the Office Action dated 09/09/2004 the Examiner examined Canceled Claims 1-21 of the application, and not pending Claims 22-41 which were submitted in PRELIMINARY AMENDMENT A concurrently with the filing of the present application.

Applicants also respectfully call to the Examiner's attention that PRELIMINARY AMENDMENT A was submitted in proper form, and thus should have been entered. Namely, under 37 C.F.R. §1.115(b)(2):

A preliminary amendment will not be disapproved if it is filed no later than:

- (i) Three months from the filing date of an application under Sec. 1.53(b)....

Since PRELIMINARY AMENDMENT A was submitted *on* the filing date of the application, the submission was timely. In addition to being timely, PRELIMINARY AMENDMENT A was otherwise proper, whereby PRELIMINARY AMENDMENT A should have been entered and Claims 22-41 examined.

Double Patenting Rejection

In the Office Action dated 09/09/2004, the Examiner asserts a nonstatutory double patenting rejection and correspondingly requires Terminal Disclaimer. Applicants traverse the rejection on the grounds that the rejection was made toward non-pending Claims.

Applicants respectfully request that the Examiner hold the Terminal Disclaimer requirement in abeyance until such time that it is determined whether the pending Claims actually conflict with Claims in a case under common ownership with the present case.

Rejection Under 35 USC § 103

Consistent with the abovementioned Double Patenting Rejection, Applicants traverse the rejection under 35 USC § 103 on the grounds that the rejection was made toward non-pending Claims.

Since the pending Claims were not examined, no *prima facie* case of obviousness can attach. And "[t]he examiner bears the initial burden of factually supporting any *prima facie* conclusion of obviousness. If the examiner does not produce a *prima facie* case, the applicant is under no obligation to submit evidence of nonobviousness" (MPEP 2142).

Applicants thus submit that all claims as presented herein are allowable over all references of record. Allowance of Claims 22-50 is respectfully solicited.

Since Cancelled Claims 1-21 were examined in the Office Action dated 09/09/2004, should the Examiner send another Office Action in lieu of a Notice of Allowance, Applicants respectfully request that such Office Action be made non-final. Applicants would greatly appreciate the Examiner's generosity in doing so.

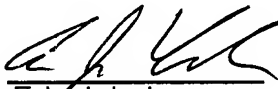
A fee in the amount of \$450 is believed due, for the 9 Claims in excess of 20, and a fee in the amount of \$1,020 is believed due for a three month extension for response. A

check is enclosed in the amount of \$1,470 for the additional Claims and the three month extension. Should any other fee be properly due, or if any fee submitted herewith is insufficient, or if any refund is due, kindly charge same, or credit any overpayment, to Deposit Account 23-2130.

Please feel free to contact me with any questions, comments or concerns, at the telephone number listed at the end of this document.

Respectfully submitted,  
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